

SCIENCE.—SUPPLEMENT.

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ECONOMICS AND JURISPRUDENCE.

MR. INGRAM, in his excellent article upon political economy in the 'Encyclopaedia Britannica,' states as a characteristic feature of the historical school of economists, that they recognize a close relation to exist between economics and jurisprudence. "The point," he says (and this he takes from Dr. Adolph Wagner of the University of Berlin), "upon which all turns, is the old question of the relation of the individual to the community. Whoever, with the older juristic and political philosophy and national economy, places the individual in the centre, comes necessarily to the untenable results which, in the economic field, the physiocratic and Smithian school of free competition has set up. Wagner, on the contrary, investigates before every thing else the conditions of economic life of the community, and, in subordination to this, determines the sphere of the economic freedom of the individual." It is my purpose in what follows to expand somewhat the view thus expressed, and to show why it is impossible for the economist to arrive at just conclusions in economic matters unless he consciously allows his thought to be influenced by a keen appreciation of the science of jurisprudence, as also of the juridical structure of the society to which his attention is addressed.

It may avoid some misapprehension if we state clearly at the outset what is meant by the terms 'jurisprudence' and 'economics.' In the science of jurisprudence it is common to consider the legal structure of society, that phrase being used in its broadest sense. It might indeed be said that this science builds the framework of society, were there not danger of pressing the metaphor so far as to give rise to the conception of a purely mechanical arrangement in human relations. Questions of government, if they do not pertain to administration or to pure politics, find treatment under jurisprudence, as also do established customs which grant personal rights and liberties, and established laws which determine the nature of property. Or, to state the matter concisely, the material out of which a science of jurisprudence is formulated is, 1°, "the essential institutions of human society, by the use of which the objects of that society are carried out through the medium of government;" 2°, the established

opinions of society, expressed in law, by which rights and duties, liberties and limitations, are determined for individual members of society.

Economics, on the other hand, deals with industrial activity. It has to do with men, with corporations, and with governments as industrial agents. It may, indeed, be properly defined as the science of industrial society; and one obtains for the first time a clear view of its general bearing when he discerns its subordinate relation to the science of society as a whole. The material out of which this science is built includes, 1°, the economic nature of man, to which all industrial activity may be traced; 2°, the material surroundings of men, to whose physical laws their industrial activity will in the long-run conform; 3°, the legal structure of society, which conditions the exercise of such industrial rights as are granted. None of these factors may be disregarded by the economist, if he would arrive at correct conclusions respecting the industrial actions of men; and the 'lego-historic' facts, although they may vary from time to time, are of as much importance while they last as the permanent facts of nature. Throughout the entire history of the world, until the dawn of what we technically term 'modern times,' the form of undertakership was dependent on the political structure of society. We observe property rights to have developed from communal to personal ownership; and with each step in this direction there has been a corresponding development of industrial methods. It has frequently been pointed out that personal liberty, and the freedom of action that it implies, were necessary to the realization of the industrial organization with which we are now familiar. And it is not too much to say that the economic character of man itself has been modified by means of the hereditary transmission of habits first contracted through the pressure of changes in the social structure; for, as the stroke of the shuttle is limited by the framework of the loom, so the industrial movements of men are bound by the liberties of law and of custom, and, to carry the metaphor a step further, the industrial weaving of society is largely determined by its legal structure.

If the analysis thus suggested be correct, one cannot disregard the close relation that exists between economics and jurisprudence. Both branches of thought are part of the larger study of society, and neither can be satisfactorily pur-

sued to the exclusion of the other ; at least, the economist must hold ever in view the juridical system of the society with which he is concerned in order to fully explain the facts he may observe.

Such statements as the above, however, do not seem to adequately present the views entertained by historical economists. Not only does the jural system influence economic activity, but the theory of jurisprudence at any time accepted has much to do in giving shape and color to the accepted theory of economics. This is not a matter of speculation. It is declared by the history of both jurisprudence and economics during the last one hundred years. It will probably pass without question, that political writers of the last century, whose enthusiasm sprang from a desire for the free exercise of all manly powers, assumed some conception of inalienable rights as the basis of all their important arguments.

The rule of authority which they endeavored to shatter was the *jus dei* ; and it was wholly logical, that, under the direction of such a rule, society should be regarded as a mechanical appliance permanently imposed upon men by some power outside society itself. This idea was shattered by the victory of French philosophy, but this did not go very far in realizing for the men that freedom which they sought. Its full effect, indeed, was to supplant the *jus dei* by the *jus naturae* ; and though this change may have had decided results, extending political rights, the new principle adopted exercised as great a tyranny over men's minds as it was ever possible for any conception of a divine arrangement in the affairs of men to exercise. It was this new principle, first well formulated by political philosophers in their criticism upon the existing structure of government and jurisprudence, this desire to secure some natural law for the conduct of the affairs of men, that gave character to English political economy. English economy, indeed, is but the application of the *jus naturae* to industrial affairs. Or, to speak of modern economists, the historical school itself is an historical development. The views of this school, says Mr. Ingram, "do not appear to have arisen, like Comte's theory of sociology, out of general philosophical ideas: they seem rather to have been suggested by an extension to the economic field of the conception of the historical school of jurisprudence, of which Savigny was the most eminent representative. The juristic system is not a fixed social phenomenon, but is variable from one stage in the progress of society to another: it is in vital relation with the other co-existent social factors ; and what, in the jural sphere, is adapted to one period of development, is often unfit for another. These ideas were seen

to be applicable to the economic system also. The relative point of view was thus reached, and the absolute attitude was found to be untenable. Cosmopolitanism in theory, or the assumption of a system equally true of every country, and what has been called perpetualism, or the assumption of a system applicable to every social stage, were alike discredited. And so the German historical school (of economists) appears to have taken its rise."

But we have not yet arrived at a full statement of the relation that exists between economics and jurisprudence. The modern school of political economy goes further than merely to recognize the existence of such a relation as has been suggested above. Having formulated a theory of society in harmony with the teachings of the science of history, the adherents of this school endeavor to bring their economic doctrines into accord with their social theory. It would be incorrect to claim uniformity of opinion respecting any theory of society. The Germans, in their general discussions, use the word 'state' as representing the final analysis of human relations ; English and American writers, when they endeavor to present German ideas, employ the word 'nation,' and perhaps I show the leanings of my own mind in choosing the word 'society.' But whether 'state,' or 'nation,' or 'society,' the fundamental thought is the same. The thing itself brought to view is an organic growth, and not a mechanical arrangement. The springs of its action are not imposed from without, but lie wholly within itself. The law of its own development is the only permanent and universal fact which its analysis discloses: all other facts are relative truths ; and those systems of thought based upon them, temporary systems.

But there are two ways in which this organism — the state, the nation, society — may be regarded. It may be regarded as an organism moved by no conscious purpose, and consequently with no control over the course of its own growth ; or it may be conceived as a continuous conscious organism that is capable of placing before itself an ideal structure to be attained. The first conception reduces society to the grade of a physical organism. It places social relations under the same law of evolution that is disclosed by a study of the organic world. But, as Mr. Ward truly says, the philosophy of evolution applied in this manner to society becomes sterile, "because, while justly claiming a social science, it falls short of admitting its complete homology with other sciences, and, while demonstrating the uniformity of social as of physical phenomena, it denies to the former that susceptibility to artificial modifi-

cation which, applied to the latter, constitutes the only practical value that science has for man." The second conception of the social organism endeavors to correct the error thus pointed out. It recognizes in society a power of self-control. It admits the truth of M. Thiers's sentence, that 'the nation is that being which reflects and determines its own action.' It holds it as useless to stop one's study with a reading of nature, and refuses to allow that the perfection of human conduct consists in following nature. The *jus naturae* finds first its true place when subordinated to the *jus hominum*.

I do not wish to be drawn from the question in hand to a discussion of the general theory of sociology, but the distinction that has been pointed out appears to me essential for a just appreciation of any study whatever that has to do with social relations. It lies back of the theory of both economics and jurisprudence, and points out the manner in which each may exercise an influence on the other. If we adopt the view that the social organism is subject to the same law of development as a physical organism, our study will be crowned only by negative results. *Laissez-faire* would then be logical, and the philosophy of anarchy inevitable. But if, on the other hand, we perceive that society may have a conscious purpose, we have discovered a scientific basis for positive and constructive study. We find that no incongruity exists in uniting the science and the art of society in the same discipline. The law of evolution, with its 'survival of the fittest' and its 'adaptation to environment,' comes to be the basis of a scientific theory of revolution or of reformation; for the fittest type to survive may first exist in the conscious purpose of society, and be realized by means of an environment arbitrarily determined.

This view of social relations leads to certain practical results in the study of economics that cannot be overlooked; and of these, none is perhaps more important than the new light thrown upon the nature and limitation of legal enactments in the process of social growth. The sphere in which law exerts a direct influence is quite restricted, but within that sphere it becomes a most efficient agency. Every change in law means a modification in rights; and when familiar rights are changed, or, what amounts to the same thing, when new duties are imposed, the plane of action for all members of society is adjusted to a new idea. In many instances legal enactments undertake to enforce certain lines of conduct on a stubborn minority; but this is not always the case, nor is it the most fruitful assistance rendered by law in the realization by society

of its conscious purposes. As contrasted with this, it may occur that the entire community is in favor of some method of procedure, and yet the practice will be universally disregarded unless granted the sanction of law. This fact, which may at first seem strange, is easily understood when it is noticed that men are more powerfully moved by immediate than by ultimate interests, and that, in the absence of a law which restrains all alike, the fierceness of competition will lead individuals to disregard public opinion, even though they admit the rightness of its commands: for each man says to himself, "If I do not do this thing, which, I confess, is to the permanent injury of society, some one else will; the evil will be done, and I will lose the personal advantage of the doing of it. But pass a law which restrains alike my neighbor and myself, and I will gladly obey it." That is to say, public opinion considers the social interest; and with this the individual interest does not always harmonize. The one holds in mind the ultimate, the other the immediate, results; and the only way in which the social purpose can influence the practice of individuals is for law to establish uniformity of action. This is the most important use of law as an agency of reform. The thought has nothing to do with 'paternal government,' but is in perfect harmony with the idea of democracy. It is the means by which the social organism may realize its conscious purpose, and it needs no words of mine to show how important is this view of the efficiency of law in matters pertaining to industrial organization. The constructive economist is forced to admit its pertinency.

But there are other conclusions which spring from this idea of social relations, and which are of especial interest because they touch directly the great economic questions of the day. This is a time when much is heard of industrial re-organization as a means of solving the social problem; but the lesson taught by the foregoing analysis is, that, in all matters pertaining to re-organization, it should be held as a first principle to maintain harmony between the various parts of the social order. A study of history declares that no part of the social structure may be considered as good or bad in itself. What appears now to be wholly pernicious may once have been capable of complete defence. Most of the evils experienced, so far as they spring from established law or permanent custom, may be traced to the fact that some right or custom has outlived its time, or that some principle, in itself just, fails to be applied to all departments of social activity. We need not turn the pages of history in search of examples of uneven and disjointed development: the source

of prevalent complaint is found in the fact that the conception of rights and duties, of liberties and constraints, of privileges and responsibilities, which lies at the basis of our juridical system, is not applied to the highly developed industrial system of the present. Difficulties have arisen because the industrial life and activity of the social organism have grown to a different plane from the one which underlies the juridical system. The piston of the social engine demands a longer stroke, the shuttle freer play, and the stationary settings of the machinery are rapped and battered in consequence. This thought may be amplified by the following suggestion, which, while being interesting in itself as bearing upon the great social question, will serve to further illustrate how closely are the sciences of jurisprudence and of economics related to each other.

The idea of liberty, which is an idea germane to every system of jurisprudence, finds its best practical presentation in English law. The peculiar feature of this English conception of liberty is, that every man is allowed full control over his own acts on condition of complete responsibility for all that may ensue from them. This is the basis of responsible government. It is well worked out in both criminal and civil law. It gives color to all thought on freedom of speech and freedom of the press. It rests, for its logical defence, upon the claim that the exercise of any power which touches the lives of others is of the nature of a grant to him who exercises it. But though this theory, that liberty is only possible under responsible exercise of power, is in good working-order so far as political and jural affairs are concerned, its controlling principle has never yet been adequately applied to the field of industrial activity. The most effective power of the present day is capital, for by means of capital the forces of nature are brought to serve the industrial purposes of men. But all men who work as business-agents must conform to the economic law of capital. In this day all must work with machinery, or not work at all; and yet the law of property, which grants ownership in capital, does not recognize its public character. The consequence is, that we find a power, which necessarily touches the life of every man, managed for purely private ends. This is contrary to the spirit of English liberty.

Could we carry the principle of responsible power over into the field of economics, and so adjust matters as to realize responsible control over all economic agencies, the industrial problem would, in my opinion, be as perfectly solved as its conditions will admit; and, what is of more importance, such a solution would be in full harmony with the form of Anglo-Saxon liberties.

We have also every reason to believe that it would be satisfactory and final, for it consists in the extension of a principle well tried in our jural and political system to the industrial life of men.

The tendency of events has already set in this direction. Certain businesses are regarded as of a *quasi*-public character, and on that ground are adjudged to be under the control of the law. For example: the decisions in the so-called Granger cases established for law, and in public opinion, the right of the states to control railroad property; and the only question that now remains pertains to the best method of control. But there is no difference, except in degree, between the railroad business and many other lines of business. All businesses that escape in any marked degree the regulative influence of competitive action fall under the same rule. The community as consumers may set up a just claim for legal regulation, and defend the claim by the doctrine of English liberty. This, however, does not touch the labor problem, except as laborers are themselves consumers. Still the principle of responsibility is, in my opinion, adequate to the solution of this phase of the question also, though in this case it pertains to the relation existing between the employer and the employee. The fundamental point at issue is a question of industrial organization in the several industries. Private ownership in capital must be allowed, in order to secure its most economical administration; but there is no reason why its administration should be irresponsible. It is from its very nature a social force; and not only should the community as a whole have a word to say respecting its management, but the employees also, as members of the community. This can be done by increasing the duties of property, which would be equivalent to the creation of proprietary rights for the non-possessors. It is at this point, I trust, that American economics will part company with German socialism. It may be proper in Germany, where the principles underlying the juridical system are quite different from those that determine either English or American law, to advocate constructive socialism; but it is absurd for one who claims to be a disciple of the historical school of economy to adopt German conclusions in this respect. Our entire juridical structure is against it, and it is easier to bring our industries into harmony with the spirit of our law than to re-organize our society from top to bottom, industries included. At least, this line of reasoning is a fair illustration of the close relation that exists between jurisprudence and economics.

This subject is capable of indefinite expansion. Indeed, I have purposely omitted a consideration

of the most apparent influence of the jural upon the industrial system, because, in the series to which this article belongs, it will find special treatment from another point of view. I refer to the effect of the law of property on general distribution, and the effect of distribution — through consumption — upon the entire economy of production. What has been said is suggestive rather than conclusive. It leads to the conception that political economy is a constructive as well as a formal study ; that it is a subordinate and not an independent study ; and that, so far as jurisprudence is concerned, not only does the jural system assist in explaining many facts of industrial life, but it may be advantageously used by society in the realization of industrial ends.

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ZOOLOGY AT THE COLONIAL AND INDIAN EXHIBITION.¹

ZOOLOGICAL knowledge is of such fundamental importance for the advancement of material prosperity, that the thoughtful visitor to a great exhibition may profitably inquire how high the various colonies now represented at the exhibition estimate a scientific acquaintance with natural objects. It is a matter for congratulation that some of the persons responsible are not of the school of Professor Huxley, so far as that distinguished naturalist believes that men of science are incompetent administrators : the Indian empire has as a commissioner Dr. Watt, a well-known botanist ; the Canadian dominion is represented by the distinguished geologist, Dr. Selwyn ; and the New Zealand court is directed by the eminent zoölogist, Dr. Julius von Haast.

On the whole, the zoölogist will, we fear, be disappointed with the show provided for him. In some of the courts the specimens might have been turned to better account ; in others mere show-cases of brilliant birds, or, still worse, poor collections of common shells and corals, are the only objective signs of an interest in zoölogy. The idea of having a representation of the fauna of a particular district is excellent, and, had it been always well carried out, the present exhibition would, from the naturalist's point of view, have been really admirable. The best illustration of this kind is afforded by South Australia, the worst by the Indian empire. The latter exhibits so much technical skill in detail, that it is really irritating to find the general result so confused and ridiculous ; a rock-snake on a tree, a crocodile on dry ground, are too trying to our patience. South Australia is very good as far as it goes, but

it is not free from the objection to which West Australia and Queensland are still more obnoxious — the fauna of none of these places consists only of birds and mammals.

A most excellent and instructive show is made by New Zealand, the land of the recently extinct *Dinornis*, the wingless *Apteryx*, and the curious, low, lizard-like form *Hatteria*. The Otago university museum is an important contributor, and visitors and experts alike will admire the very beautiful specimens of cartilaginous skeletons which have been prepared under the direction of Prof. T. Jeffery Parker — worthy son of a worthy father. Among the shark-like forms here seen, should be noted especially *Notidanus*, which is remarkable for having its lower jaw, not merely connected with the skull by the upper half of its mandibular arch (as is the case in all pentadactyle vertebrates), but also by the hyoid (as is the case in the great majority of fishes), or for, in other words, exhibiting what Professor Huxley has called the 'amphistylic' mode ; *Callorhynchus*, which is the southern representative of the northern 'holocephalous' *Chimaera* ; and the bony *Regalecus argenteus*, one of the longest of the ribbon fishes, a memoir on which by Prof. T. J. Parker has been lately published by the Zoölogical society of London. Among the birds there stands in a prominent position an excellent skeleton of the gigantic moa (*Dinornis maximus*) ; there is an interesting group of *Apteryx*, as well as some well-stuffed specimens of the avifauna ; the visitor may chance to hear a sheep-farmer dilating on the enormities of the kea parrot. There is a good collection of dried fish, and among the spirit specimens there are a number of species which, having been insufficiently described, will be gladly examined by stay-at-home naturalists. Of the teaching collections of the museum, it need only be said that they show quite as high a standard of preparation as the best to be found in our own country. This is quite the best zoölogical exhibit in the whole show, and the excellent preparation of the octopus is not the only one which may be profitably studied by curators of English museums.

Perhaps the exhibit which comes next in importance is that of Canada, where there is a really fine collection of fish and marine invertebrates, all well and carefully catalogued ; the government of the dominion is to be congratulated on this proof of its interest in natural history. The authorities at home may, perhaps, be inclined to deduce the moral which presses itself on ourselves ; the Canadian government has a department of fisheries, to which, in the year ending June, 1884, \$116,531 were allotted. There are some very fine heads of mammals in other parts of the Canadian

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